IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(1) Writ Petition No. 492 (M/B) of 2003

Jeewan Prasad s/o late Sri Khagi Ram,
R/o Village Punoli & P.O. Haldiyani,
District Almora Petitioner

Vs.

1. State of Uttaranchal through
   Secretary of Health, Dehradun
2. Director General,
   Medical, Health and Family Welfare,
   Dehrdun .
3. Mahanideshak, Chikitsa Avam Prashikshan,
   Jawahar Bhwan, Ashok Marg,
   Lucknow
4. Principal,
   Maharani Laxmi Bai Medical College,
   Jhansi, Uttar Pradesh Respondents

Mrs. Tehmina Punwani, Advocate for the petitioner
Sri N.B. Tiwari, Chief Standing Counsel for respondent no. 1 & 2.
Smt. Beena Pandey, Standing Counsel, Govt. of U.P.

(2) Writ Petition No. 552 (M.B.) of 2003

Km. Shikha Agarwal d/o Sri Narendra Agarwal
R/o Katora Tal, Town Kashipur
District Udham Singh Nagar Petitioner

Vs.

1. State of Uttaranchal through
   Secretary of Health, Dehradun
2. Director General,
   Medical Health & Family Welfare,
   Govt. of Uttaranchal, Dehradun.
3. Mahanideshak,
   Chikitsa Shiksha Evam Prashikshan,
   Jawahar Bhawan, Ashok Marg,
   Lucknow.
4. Chhatrapati Sahu Ji Maharaj Medical College,
   (Formerly known as K.G.M.C.),
   Lucknow through its Registrar.
5. Lala Lajpat Rai Memorial Medical College,
   Meerut through its Principal.
6. Km. Kanika Agarwal,
   Daughter of Dr. K.K. Agarwal,
   R/o Bazpur Road, Town Kahsipur,
   District Udham Singh Nagar Respondents

Sri Sudhir Kumar, Advocate, for the petitioner,
Sri N.B. Tiwari, Chief Standing Counsel for respondents no. 1 & 2.
Smt. Beena Pandey, Standing Counsel, Govt. of U.P.
Sri Alok Singh, Advocate, for respondent No. 6

and

(3) Writ Petition No. 638 (M.B.) of 2003

Pankaj Kumar s/o Mr. R.P. Singh,
R/o B-14, Shastri Nagar, Jwalapur,
District Haridwar Petitioner

Vs.

1. State of Uttaranchal though
   Secretary of Health, Dehradun.
2. Director General,
   Medical Health and Family Welfare,
   Dehrdun.
3. Director General ,
   Chikistsa Shiksha Evam Prashikshan,
   U.P. Jawahar Bhawan, Ashok Marg,
   Lucknow.
4. Principal
   S.N. Medical College, Agra.
5. Principal
   Maharani Laxmi Bai Medical College,
   Jhansi, Uttar Pradesh. Respondents

Mrs. Tehmina Punwai, Advocate for the petitioner
Sri N.B. Tiwari, Chief Standing Counsel for respondents no. 1 & 2.
Smt. Beena Pandey, Standing Counsel, Govt. of U.P.

Coram: Hon. S.H. Kapadia, C.J.
Hon. Rajesh Tandon, J.

Dated: 15.09.2003

Oral Judgment (Per Hon'ble S.H. Kapadia, C.J.)

All the above three writ petitions are a fall out of Writ Petition No. 816 (M.B.) of 2002, disposed of by the earlier Bench of this Court vide order dated 11th June, 2003. Therefore, it is necessary to set out few facts concerning Writ Petition No. 816 (M.B.) of 2002. Km. Shikha Agarwal is a permanent resident of Kashipur, District Udham Singh Nagar within the State of Uttaranchal. A Combined Pre-Medical Test, 2002, Uttaranchal was held by Bundelkhand University, Jhansi on 18th August, 2002 for total 55 seats in various Medical Colleges, situated in Uttar Pradesh. The allocation of 55 seats was as under:-

(a) M.B.B.S. Course 33,
(b) B.D.S. Course 3,
(c) B.H.M.S. Course 15,
(d) B.V.M.S. Course 4,

Total 55 seats.

The said 55 seats available to the residents of Uttaranchal were subject to the Reservation policy, whereby seats were vertically and horizontally reserved as per clause 3.1 and clause 3.2 of the Brochure. For scheduled caste the number of seats reserved were 19% for scheduled tribe they were 4% and for Other Backward Classes the reservation was 14%. The horizontal reservation, sub-dividing each category, including General category, was as under:-

2% for dependents of Freedom fighter,
2% for children of Ex-Army Personnel,
3% for disabled persons,
20% for women candidates.

Accordingly out of 33 seats for M.B.B.S. 13 seats were reserved for scheduled caste/ scheduled tribes/ Other Backward Classes category and 20 seats were available for General category candidates. 20% of 20 seats were available for women candidates. Therefore, under horizontal reservation 4 seats were available as reserved for women candidates. Km. Shikha Agarwal was a woman candidate from General category and she was entitled to be considered for admission under 4 reserved seats for women.

On 18th April, 2002 Km. Shikha Agarwal appeared for Combined Pre-Medical Test, 2002, Uttaranchal. She was successful. She was called for counseling in unreserved category and in the sub-category of women reservation .She got 164 marks. She was placed at serial no. 23. After counseling she was allocated a seat for B.D.S. Course. She was not allocated a seat for M.B.B.S. Course. Consequently, she filed a writ petition, bearing no. 816(M.B.) of 2002. By the writ petition she sought a seat under Women's quota in M.B.B.S. Course for academic Session 2002-03.

Writ Petition No. 816 (M.B.) of 2002 came for hearing before the earlier Bench of this Court (Hon'ble P.C.Verma, Acting Chief Justice and Hon'ble M.M.Ghildiyal, J.) on 16th April, 2003. On that date the earlier Bench stayed operation of Clause (3) of Government order dated 21st June, 2002, which was not even under challenge. At this stage we quote Clause (3) of the Government order dated 21st June, 2002:-

> "*In case any woman is selected on the basis of merit on any State Public Services or posts, then she will be counted against the reserved posts of women on the said post.*"

It was held by the said order that Clause (3) of the Government order dated 21st June, 2002 was contrary to the law laid down by the Supreme Court in Indra Sawhney's case. It was held that Clause (3) was discriminatory in nature. Consequently, the Division Bench stayed Clause (3) of the Government order dated 21st June, 2002. By the said order the Secretary, Medical Education, U.P. was directed to give admission to Km. Shikha Agarwal ignoring Clause (3) of the Government order dated 21st June, 2002. Consequently, Km. Shikha Agarwal got admission provisionally in M.B.B.S. Course for academic Session 2002-03 in K.G. Medical College, Lucknow. Km. Shikha Agarwal Accordingly joined the said Course. However, this was subject to the result of Writ Petition No. 816 (M.B.) of 2002. Thereafter, the matter came before the earlier Bench of Hon'ble P.C.Verma, Acting Chief Justice and Hon'ble Irshad Hussain, J. on 11th June, 2003. At this stage it may be mentioned that after her provisional admission to K.G. Medical College, Lucknow, the second counselling was held. On 11th June, 2003 the earlier Bench, therefore, took the view that since the second counseling has been held the petition has become infructuous. That the continuance of the petitioner as a student of M.B.B.S. Course shall be governed by the subsequent decision of the counselling Board. Accordingly, the petition was dismissed as infructuous. With the order dated 11th June, 2003, Clause (3) of the Government order dated 21st June, 2002 came out of the challenge. In fact, as stated above, there was no

challenge to the validity of the Government order dated 21st June, 2002 in Writ Petition No. 816 (M.B.) of 2003. To complete the facts, it may be pointed out that fresh counselling was held on 29th May, 2003 and Km. Shikha Agarwal has been allotted Lala Lajpat Rai Memorial Medical College, Meerut. Therefore, pursuant to the liberty given by the earlier Bench of this Court vide order dated 11th June, 2003, Km. Shikha Agarwal has now filed Writ Petition No. 552 (M.B.) of 2003, stating that allotment of Lala Lajpat Rai Memorial Medical College, Meerut to her instead of Chhatrapati Sahu Ji Maharaj Medical College, Lucknow, by Director General, Medical Education and Training, U.P. is erroneous and that she should be allowed to continue her studies at Chhartrapati Sahu Ji Maharaj Medical College, Lucknow. Therefore, Writ Petition No. 552 (M.B.) of 2003 has come for admission before us today. However, in the meantime two other students, namely, Jeewan Prasad and Pankaj Kumar have come to this Court by Writ Petitions No 492 (M.B.) of 2003 and 638 (M.B.) of 2003 respectively.

In the case of Jeewan Prasad, the facts are as follows. He appeared in the Combined Pre-Medical Test, 2002, Uttaranchal on 18th April, 2002. As stated above the Combined Pre-Medical Test, 2002, Uttaranchal was for 55 seats. In the second counselling Jeewan Prasad was successful and he was allotted admission in M.L.B. Medical College, Jhansi for M.B.B.S. Course. He took admission on 10th January, 2003. He deposited his fees. He started attending classes from 16th January, 2003. He appeared in First Terminal Examination in April, 2003. He was studying for Second Terminal Examination when on 28th May, 2003 he received a letter from the Principal of M.L.B. Medical College, Jhansi stating that the Director General, Medical Education and Training, Lucknow had directed fresh counselling. This was pursuant to the interim order passed by the earlier Bench of this Court dated 16th April, 2003 in Writ Petition No. 2002, consequently his admission in M.B.B. S Course was cancelled Jeewan Prasad, therefore, went

for fresh counselling. This time Jeewan Prasad after fresh counselling was allotted B.D.S. at K.G.Medical College, Lucknow. This was on 29th May, 2003 therefore, the petitioner was compelled to join B.D.S. Course despite Jeewan Prasad having completed his First Terminal as a student of M.B.B.S. Course. Jeewan Prasad was not a party- respondent in Writ Petition No. 816 (M.B.) of 2002 wrongly typed as 816 (M.B.) of 2003. Jeewan Prasad has filed, therefore, Writ Petition No. 492 (M.B.) of 2003, by which he seeks permission to continue his studies in M.B.B.S. from M.L.B. Medical College, Jhansi as a regular selected candidate.

Similarly, Pankaj Kumar also appeared for Combined Pre-Medical Test, 2002, Uttaranchal. He secured 133 marks out of 200. In the second counselling on 17th December, 2002 he appeared. He was successful in the second counselling and he was allotted admission in S.N. Medical College, Agra for M.B.B.S. Course. He took admission on 07th January, 2003. He deposited the requisite fees in S.N. Medical College, Agra for M.B.B.S. Course. He started regular classes in M.B.B.S. Course as a regular student. He appeared in First Terminal Examination in April/May, 2003. However, he was called for fresh counselling on 29th May, 2003, vide advertisement dated 22nd May, 2003. This was pursuant to the interim order passed by the earlier Bench of this Court dated 16th April, 2003 in Writ Petition No. 816 (M.B.) of 2002 in the case of Km. Shikha Agarwal vs. State of Uttaranchal, referred to herein above. Pankaj Kumar was successful in the fresh counselling. He was allotted M.B.B.S. Course at M.L.B. Medical College, Jhansi. He had no option, therefore, by Writ Petition No. 638 (M.B.) of 2003 seeks to continue his education in M.B.B.S. from S.N. Medical College, Agra as a regular selected candidate and not as a student of M.L.B. Medical College, Jhanshi,, which has been allotted to him pursuant to fresh counselling. Today before us three petitions came for admission. They were writ Petitions no. 492 (M.B.) of 2003 filed by Jeewan Prasad; 638 (M.B.) of

2003 filed by Pankaj Kumar and Writ Petition No. 552 (M.B.) of 2003 filed by Km. Shikha Agarwal.

Mrs. Tehmina Punwani, learned Advocate, appearing on behalf of Jeewan Prasad and Pankaj Kumar, petitioners in Writ Petitions no. 492(M.B.) of 2003 and 638 (M.B.) of 2003 respectively contended that the petitioners were not party-respondents in Writ Petition No. 816 (M.B.) of 2002. She contended that Jeewan Prasad has suffered on account of the interim order passed by the earlier Bench of this Court in Writ Petition No. 816 (M.B.) of 2002. She contended that by the interim order dated 16th April, 2003, Clause (3) of the Government order dated 21sth June, 2002 was stayed by the earlier Bench of this Court, consisting of Hon'ble P.C. Verma, Acting Chief Justice and Hon'ble M.M. Ghildiyal, J. She pointed out that because of that order dated 16th April, 2003, Jeewan Prasad, who had completed his First Terminal in M.B.B.S. Course, was ordered to go for fresh counselling, in which he has been allotted admission in B.D.S. Course. She pointed out that Jeewan Prasad was not even aware of the interim order of the earlier Bench of this Court dated 16th April, 2003. She pointed out that even Km. Shikha Agarwal had not challenged the validity of Clause (3) of the Government order dated 21st June, 2002 in her Writ Petition No. 816 (M.B.) of 2002 and yet the earlier Bench had stayed Clause (3) of the Government order without notice to the affected students. She contended that Jeewan Prasad had taken admission in the M.B.B.S. Course in M.L.B. Medical College, Jhansi. He had paid his fees. He had started attending classes as a regular student. He had completed his First Terminal Examination in April, 2003 and when he was studying for Second Terminal in regular course of M.B.B.S. his admission in the M.B.B.S. Course was cancelled by virtue of the interim order passed by the earlier Bench of this Court on 16th April, 2003 and he was ordered to go for fresh counselling, whereby he was allotted B.D.S. Course at K.G. Medical College, Lucknow. She further pointed out that Km. Shikha Agarwal got one more benefit. By

reason of the interim order dated 16th April, 2003 she was admitted provisionally in the M.B.B.S. Course. However, that was subject to the result of the Wit petition No. 816 (M.B.) of 2002. Subsequently, when Writ Petition No. 816 (M.B.) of 2002 came for hearing the earlier Bench dismissed the writ petition as infructuous. This was vide order dated 11th June, 2003. In the circumstances, Clause (3) of the Government Order dated 21st June, 2002 has not been struck down it is argued on behalf of Jeewan Prasad and Pankaj Kumar that they may be allowed to exchange their positions. It is argued on behalf of Jeewan Prasad that he should be allowed to prosecute his studies in M.B.B.S. Course from M.L.B. Medical College, Jhanshi and similarly Pankaj Kumar should be allowed to prosecute his M.B.B.S. Course from S.N. Medical College, Agra, particularly when Writ Petition No. 816 (M.B.) of 2002 has been disposed of.

Mr. Alok Singh, learned Advocate, appearing on behalf of Km. Kanika Agarwal, respondent no. 6 in Writ Petition No. 552(M.B.) of 2003 has pointed out that no relief should be given to Km. Shikha Agarwal in Writ Petition No. 552 (M.B.) of 2003. He pointed out that Km. Shikha Agarwal got admitted provisionally in M.B.B.S. Course in K.G. Medical College, Lucknow. However, on fresh counselling she is given her admission in the Medical College, Meerut. He pointed out that by this Writ Petition No. 552(M.B.) of 2003 Km. Shikha Agarwal now wants to go back to Medical College, Lucknow and if the writ petition is allowed, it would displace Km. Kanika Agarwal, respondent. No. 6, who is pursuing her studies in the Medical College at Lucknow. Mr. Alok Singh, learned Advocate for Km. Kanika Agarwal, respondent no. 6 in Writ Petition N. 552 (M.B.) of 2003 submits that the order passed by the counselling Board allowing Km. Shikha Agarwal to pursue her studies in M.B.B.S. Course should be revoked because there is no challenge to Clause (3) of the Government order in Writ Petition No. 816 (M.B) of 2002, which has been finally disposed of as infructuous and since that Writ Petition

No. 816 (M.B.) of 2002 has been dismissed as infructuous Km. Shikha Agarwal should go back to the B.D.S. Course. Mr. Alok Singh further pointed out that Km. Kanika Agarwal, respondent no. 6 has got her admission in the Medical College at Lucknow on merits and she should not be disturbed. That she had obtained a higher ranking than Km. Shikha Agarwal. That since Km. Kanika Agarwal had obtained higher rank than Km. Shikha Agarwal, Km. Kanika Agarwal had opted for Medical College at Lucknow and her place should not be disturbed.

We have narrated in detail facts in Writ Petition No. 816 of (M.B.) of 2002. In writ petition Km. Shikha Agarwal had not challenged Clause (3) of the Government order dated 21st June, 2002. In that writ petition Jeewan Prasad and Pankaj Kumar are not even party-respondents. By reason of the interim order dated 16th April, 2003 Jeewan Prasad and Pankaj Kumar were vitally affected. They were prosecuting studies, which got disturbed for no fault of theirs. Clause (3) of the Government order dated 21st June, 2002 was stayed by the interim order passed on 16th April, 2003, which automatically came to an end on 11th June, 2003, when the writ petition was dismissed as infructuous by the earlier Bench of this Court. With the dismissal of the writ petition, Clause (3) of the Government order dated 21st June, 2002 remains intact. We cannot put the entire clock back. In the circumstances, we pass the following order.

Order

(a) Writ Petition No. 552(M.B.) of 2003 stands rejected. Consequently, Km. Shikha Agarwal will continue her studies in the M.B.B.S. Course in Lala Lajpat Rai Memorial Medical College, Meerut and Km. Kanika Agarwal will prosecute her M.B.B.S. Course from Chhatrapati Sahu Ji Maharaj Medical College, formerly known as K.G. Medical College, Lucknow.

(b) As far as the cases of Jeewan Prasad and Pankaj Kumar are concerned, we are asking them to make a

joint representation to the Director General, Medical Education & Training within two weeks from today. We recommended their case strongly because they have suffered on account of the interim order passed by the earlier Bench of this Court dated 16th April, 2003 in Writ Petition No. 816 (M.B.) of 2003, wherein they were not party-respondents. The Director General, Medical Education and Training will; try to accommodate these students in M.B.B.S. Course as far as possible provided it does not affect any other student. Their joint representation may also be considered by the Director General, Medical Education and Training because they are prepared to swap their positions. This is purely by way of recommendation. It is not by way of directions from this Court. This recommendation is also made by us because interim order dated 16th April, 2003 in Writ Petition No. 816(M.B.) of 2002 no more survives with the dismissal of said writ petition by the earlier Bench on 11th June, 2003.

(c) Subject to above, Writ Petitions no. 492(M.B.) of 2003, 638(M.B.) of 2003 and 552 (M.B.) of 2003 are all disposed of with no order as to costs.

(Rajesh Tandon,J.) **(S.H. Kapadia, C.J.)**

Tangwan